Supreme Court, U.S.
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No. ____

In The
Supreme Court of the United States

SANDY LATIMER, individually and as surviving spouse of ROY LATIMER, deceased; LEE LATIMER; KRISTI LATIMER; DAWN LATIMER; ALLISON STOPKE, as parent and natural guardian of KIP STOPKE, a minor; and JULIE A. RUIZ, individually and as surviving spouse of ERIC RUIZ, deceased,

Petitioners,

v.

DONALD JOSEPH LAUGHLIN dba RIVERSIDE RESORT & CASINO,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Arizona

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

First question—general personal jurisdiction. A Nevada casino located a few hundred feet across the Colorado River from Arizona had extensive contacts with Arizona. Those contacts included employing over 1,500 Arizona residents, advertising and soliciting business in Arizona, maintaining a casino parking lot in Arizona for Arizona customers, and providing transportation services between Arizona and Nevada. Thos minimum contacts support general personal jurisdiction in Arizona. Did Arizona courts erroneously hold that there was no general personal jurisdiction?

Second question—specific personal jurisdiction. A Nevada casino over-served an obviously intoxicated Arizona customer. Casino employees took him to the parking lot, placed him in his car, and sent him into Arizona. He drove over the bridge into Arizona, where he caused a collision killing two Arizona residents. These intentional, Arizona-aimed acts support asserting personal jurisdiction under this Court's unanimous *Calder v. Jones* "effects" test.[1] Did Arizona courts erroneously hold that there was no specific personal jurisdiction over the casino?

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[1] *Calder v. Jones*, 465 U.S. 783, 789 (1984).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding before this Court are:

The petitioners: Sandy Latimer, individually and as surviving spouse of Roy Latimer, deceased; Lee Latimer; Kristi Latimer; Dawn Latimer; Allison Stopke, as parent and natural guardian of Kip Stopke, a minor; and Julie A. Ruiz, individually and as surviving spouse of Eric Ruiz, deceased.

The respondent: Donald Joseph Laughlin, a Nevada citizen doing business as Riverside Resort & Casino.

Under Rule 29.6, Rules of the Supreme Court, Petitioners state that they and all Respondents are individuals and not corporations, with the exception of Riverside Resort & Casino—which is really just a Nevada citizen—Donald Joseph Laughlin—doing business under a corporate name.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully seek a Writ of Certiorari to review the Arizona Supreme Court's and the Arizona Court of Appeals' incorrect dismissal of this case for an alleged lack of general and specific personal jurisdiction.

OPINIONS AND ORDERS BELOW

Petitioners ask this Court to review:

(1) The Arizona Court of Appeals' June 24, 2008 memorandum decision affirming dismissal of Petitioners' complaint. *Latimer v. Laughlin*, Ariz. Ct. App. Case No. 1 CA-CV 07-0417, 2008 WL 2584451 (June 24, 2008).

(2) The Arizona Supreme Court's October 28, 2008 Order denying the petition for review of the Arizona Court of Appeals' June 24, 2008 memorandum decision.

JURISDICTION

On October 28, 2008, the Arizona Supreme Court denied the Petitioners' petition for review of the Arizona Court of Appeals' June 24, 2008 memorandum decision affirming dismissal of the Petitioners' complaint. That dismissal was made for an alleged lack of personal jurisdiction.[2] This Court has

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[2] *Latimer v. Laughlin*, Ariz. Ct. App. Case No. 1 CA-CV 07-0417, 2008 WL 2584451 (June 24, 2008).

jurisdiction under 28 U.S.C. § 1257(a) and under Rules 10 and 13(1), Rules of the Supreme Court.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

> **Rule 4.2(a), Arizona Rules of Civil Procedure.** A court of this state may exercise personal jurisdiction over parties, whether found within or outside the state, to the maximum extent permitted by the Constitution of this state and the Constitution of the United States.
>
> **Amendment XIV, United States Constitution.** No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

STANDARD OF REVIEW

Federal courts review de novo a decision dismissing a case for lack of personal jurisdiction.[3]

STATEMENT OF THE CASE

1. Introduction.

A Nevada casino located a few hundred feet from Arizona had immensely strong business and consumer connections with Arizona. The casino's employees over-served one of the casino's Arizona customers, brought his car to him, and placed him in that

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[3] *Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007).

car—enabling him to drive across a bridge into Arizona. The drunken patron promptly caused a traffic collision killing two Arizona residents. General jurisdiction is evident—although Arizona state courts found otherwise. But far more important, the case evokes the unanimous *Calder v. Jones* personal-jurisdiction "effects" test.[4] The casino aimed its tortious conduct at Arizona and its residents as surely as if it had launched a missile at Arizona. Applying the effects test is essential for the Petitioners to prosecute their dram-shop case.

The broader, underlying problem is the extreme, expanding danger posed by border casinos and bars. Whether freestanding bars or part of large casinos, border liquor establishments repeatedly serve obviously inebriated customers and send them away to kill and main residents of bordering states. As this case exemplifies, people living and travelling in border states like Arizona are at risk from the negligent furnishing of alcohol in across-the-border jurisdictions like Nevada and California. Those jurisdictions lack any civil dram-shop liability to help curb the alcohol-service negligence of their own border bars and casinos. But this Court's 1984 *Calder v. Jones* effects test offers a remedy. The effects test sanctions personal jurisdiction when a border casino or bar has made people in a neighboring state targets of its alcohol-service negligence. *Calder*'s fair, simple, logical jurisdictional-effects test will permit a dram-shop remedy in this case. And it will also, in future cases, impose civil accountability on border bars and casinos. That will encourage those liquor purveyors to

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[4] *Calder v. Jones*, 465 U.S. 783 (1984).

serve liquor more responsibly—avoiding or reducing future human suffering, and saving lives that would otherwise be lost.

2. Having abundant jurisdictional connections with Arizona, the Nevada casino is located just a few hundred feet across the Arizona border.

At every stage of the state-court proceedings, the operative facts have been undisputed. Respondent Donald J. Laughlin ("Laughlin")—doing business as the Riverside Resort and Casino—operates a popular casino. It is located in Laughlin, Nevada—directly across the Colorado River from Bullhead City, Arizona.[5] A corporation actually owns the casino's physical property.[6] And Laughlin holds the gaming and business licenses and leases the premises from a corporation.[7] For the sake of simplicity —and because of Laughlin's byzantine mix of personal and corporate ownership and control—this Petition will usually refer collectively to the responsible entities as the "casino."

The Nevada casino has so many contacts with Arizona that it could be mistaken for an Arizona business. For instance, the casino leases and controls a parking lot in Bullhead City, Arizona—right across

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[5] *App. to Pet. for Rev. to Ariz. Sup. Ct.* at Exh. 1, p. 3 and at Exh. 6, ¶ 5.

[6] *Id.* at Exh. 4, p. 2.

[7] *Id.* at Exh. 4, sub-exhs. A-C.

the Colorado River from the casino.[8] The lot provides parking for many of the casino's Arizona customers. In fact, casino personnel refer to the lot as the "Arizona parking lot."[9] The casino sets aside part of that Arizona lot for the over 1,500 casino employees who live in Arizona.[10] Casino employees who park in unauthorized areas of the Arizona lot will have their vehicles towed at their own expense.[11]

Laughlin actually built a bridge spanning the Colorado River near the casino.[12] The casino owns a shuttle van and several boats taking casino customers and casino employees between the casino and the Arizona parking lot. Indeed, the casino also owns the Arizona boat dock where the casino's boats pick up Arizona residents parking at the Arizona lot.[13] The casino maintains the Arizona parking lot and has responsibility for security—patrolling it with security personnel 9 to 12 times a day.[14]

The casino has still other Arizona contacts. For example, the casino leases hangar space at the

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[8] *Id.* at Exh. 2, p. 4; Exh. 3, p. 6; Exh. 5, p. 8, lines 1-7.

[9] *Id.* at Exh. 2, p. 4, and sub-exh. D.

[10] *Id.* at Exh. 2, p. 4, and sub-exh. E.

[11] *Id.*

[12] *Id.* at Exh. 2, p. 8, and sub-exh. F.

[13] *Id.* at Exh. 2, p. 4, and sub-exh. B.

[14] *Id.* at Exh. 2, p. 4, and sub-exh. A.

Laughlin/Bullhead Airport in Bullhead City.[15] The casino transports customers to and from that airport and the casino.[16] The casino also leases billboard space in Bullhead City and Wikieup, Arizona.[17] Moreover, the casino sends mass mailings into Arizona.[18] And it does direct business with at least 70% of the businesses in Bullhead City.[19] The casino's website advertises weddings in Arizona as part of a wedding package on the "USS Riverside," and gives instructions on obtaining wedding licenses from the Mohave County Clerk's Office.[20] The casino facilitates on-line lodging reservations, conditioned upon a website transfer of guest credit-card information, and provides e-mail addresses of various casino managers.[21] The casino sponsors a Bullhead City telephone number for making hotel and restaurant reservations and for contacting the Riverside Resort about any aspect of the Laughlin operation. An online reverse directory shows the Bullhead City telephone number as located at 1650 Camino Court in Bullhead City, Arizona.[22] And the casino offers patron discounts

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[15] *Id.* at Exh. 1, p. 2, and sub-exh. B.

[16] *Id.* at Exh. 2, p. 5.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at Exh. 2, p. 6, and sub-exh. C.

[22] *Id.* at Exh. 2, p. 6

for many businesses in Kingman, Bullhead City, and Topock, Arizona.[23]

Laughlin personally owns or has a beneficial interest in many parcels of real property in Arizona—including the Arizona parking lot—through the Mohave Land, LLC, an Arizona limited liability company. The Donald J. Laughlin Family Trust is listed as an officer and director of the limited liability company.[24] Finally, Laughlin has bank accounts with JP Morgan Chase Bank, First Union Bank and Bank of America offices all located in Bullhead City, Arizona.[25]

3. The Nevada casino over-served an Arizona patron, got his car, placed him in it, and sent him across the bridge into Arizona—with predictably catastrophic results.

In the evening of February 20, 2003, an Arizona resident drove from Arizona to the casino in Laughlin, Nevada.[26] He left his car at a casino lot next to the casino. The customer excessively drank alcohol at the casino into the early morning of February 21, 2003. Casino security guards then escorted him from the premises, secured his car, and put him in it—although they knew that he was severely alcohol-impaired. He

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[23] *Id.*

[24] *Id.* at Exh. 2, p. 6, sub-exh. J.

[25] *Id.* at Exh. 1, sub-exh. B at p. 2.

[26] *Latimer v. Laughlin*, Ariz. Ct. App. Case No. 1 CA-CV 07-0417, slip op. at ¶ 2 (June 24, 2008)

left the casino, crossed the bridge into Arizona, and promptly caused a collision that killed two Arizona residents.[27]

4. The Arizona state-court case ended in dismissal for an alleged lack of personal jurisdiction.

Petitioners sued the driver, Laughlin, the casino, and associated entities in the Arizona superior court in Mohave County.[28] There was some judicial confusion over the corporate forms associated with Laughlin. But in the end, the superior court dismissed the case against Laughlin and the casino because of an alleged lack of either general or specific personal jurisdiction over them.[29] The Arizona Court of Appeals agreed that there was no general or personal jurisdiction, and affirmed dismissal.[30] On October 28, 2008, the Arizona Supreme Court declined review, setting the stage for this Petition for Writ of Certiorari.

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[27] *Id.* at ¶ 2.

[28] *Id.* at ¶ 3.

[29] *Id.* at ¶ 4-6.

[30] *Id.* at ¶ 19.

REASONS FOR GRANTING THE PETITION

1. Arizona courts may assert general personal jurisdiction over the casino because of its extensive contacts with Arizona.

Arizona courts have general personal jurisdiction if a defendant has sufficient minimum contacts with the state that suing there "does not offend traditional notions of fair play and substantial justice."[31] A defendant need only have substantial—or continuous and systematic—contacts with Arizona.[32] Here, Arizona courts may constitutionally assert general jurisdiction over the Nevada casino, since it has substantial, continuous, and systematic contacts with Arizona. Moreover, its conduct and connection with Arizona are so strong that it should have reasonably anticipated suit in Arizona.[33]

Arizona courts should have recognized general personal jurisdiction over Laughlin and the border casino that he owns and operates. The casino had, after all, substantial, continuous contacts with Arizona and with its residents. But the Arizona courts decided the general jurisdiction question in a way that directly conflicts with this Courts established minimum-

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[31] *Bohreer v. Erie Ins. Exch.*, 216 Ariz. 208, 213, 165 P.3d 186, 191 (App. 2007).

[32] *Batton v. Tenn. Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270, 736 P.2d 2, 4 (1987).

[33] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

contacts personal-jurisdiction decisions.[34] That is an important federal question that this Court settled long ago.[35] The Arizona courts' departure from this Court's clear decisions has denied to the Petitioners any chance to prosecute their dram-shop lawsuit on its merits. Petitioners are entitled to sue the Nevada casino in Arizona because of that casino's abundant contacts with Arizona. Under Rule 10(c), Rules of the Supreme Court, this is precisely the sort of case justifying acceptance of the Petition.

2. Because the casino and its employees targeted Arizona, that state's courts may assert specific personal jurisdiction over them under the *Calder* "effects" test.

Specific jurisdiction exists when a defendant purposefully creates contacts in the forum or purposefully directs its acts at people in that forum.[36] And that is what the casino and its employees did. They over-served a casino customer, took him to his

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[34] *Quill Corp. v. North Dakota by and through Heitkamp*, 504 U.S. 298, 307 (1992) (This Court has "abandoned more formalistic tests that focused on a defendant's 'presence' within a State in favor of a more flexible inquiry into whether a defendant's contacts with the forum made it reasonable, in the context of our federal system of Government, to require it to defend the suit in that State.").

[35] *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) ("For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.").

[36] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

car, and aimed him at Arizona. Their acts targeted Arizona as surely as if they had fired a mortar across the border. The facts prove specific personal jurisdiction under this Court's *Calder v. Jones* "effects" test.[37]

The key aspect of this appeal is the Arizona courts' refusal to apply the *Calder* analysis that this Court adopted in 1984. The Arizona courts have thus decided an important federal question in a way directly conflicting with this Court's unanimous *Calder* opinion. That failure supports accepting this Petition, under the terms of Rule 10(c), Rules of the Supreme Court.

In *Calder*, entertainer Shirley Jones sued the writer and editor of a libelous *National Enquirer* article in California state court. The defendants fought personal jurisdiction, arguing that they had written and edited the article solely in Florida.[38] But this Court unanimously held that California jurisdiction was proper because the defendants had not committed "mere untargeted negligence."[39] Rather, they "expressly aimed" their "intentional, and allegedly tortious, actions" at California.[40] After all, the defendants had written and edited "an article that they *knew* would have a potentially devastating impact upon respondent. And they *knew* that the brunt of

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[37] *Calder v. Jones*, 465 U.S. 783, 789 (1984).

[38] *Id.* at 785-86.

[39] *Id.* at 789.

[40] *Id.*

that injury would be felt by respondent in [California where] she live[ed] and work[ed]."[41] And California courts had jurisdiction because of the Florida conduct producing damaging "effects" in California.[42]

Calder emphasized both the defendants' intentional and allegedly tortious actions, and their reasonable anticipation of being haled into court in California for those actions.[43] Here, the casino intentionally served alcoholic beverages to an obviously intoxicated patron, brought his car to him, placed him in his car, and sent him across the bridge to Arizona. Thus, as in *Calder*, the casino targeted its acts and its effects at another state—and should have anticipated a lawsuit there.

Indeed, *Calder* shows that, under certain circumstances, an intentional act—even if not wrongful—suffices for personal jurisdiction. After all, *Calder* held that the jurisdictional acts were "intentional, *and* allegedly tortious"—not that the acts were an intentional tort.[44] As the Ninth Circuit explained, "we do not read *Calder* necessarily to require in purposeful direction cases that all (or even any) jurisdictionally relevant effects have been caused by wrongful acts."[45] That is, "intent" in *Calder*

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[41] *Id.* at 789-90 (emphasis added).

[42] *Id.* at 789.

[43] *Id.* at 789-90.

[44] *Id.* at 789 (emphasis added).

[45] *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1208 (9th Cir. 2006) (partially overruling *Bancroft*

possesses "specialized meaning" referring "to an intent to perform an actual, physical act in the real world, rather than an intent to accomplish a result or consequence of that act."[46] The *Calder* intent is intent to act—not intent to commit an intentional tort.

Here, the casino intended to—and did—perform actual, physical acts. But even if *Calder* required a "wrongful" intentional act, the casino did that by over-serving an intoxicated casino employee—even taking his car to him, putting him in it, and aiming him at Arizona. Those acts were intentional wrongful conduct, since it was substantially certain that the driver would harm someone in Arizona. After all, "intent" is *not* limited to desired consequences.[47] That is, if a person acts knowing that the consequences pose a substantial risk—or that harm is substantially certain to result—the law treats that person as having "desired to produce the result."[48]

& Masters, Inc. v. Augusta Nat'l Inc., 223 F.3d 1082 (9th Cir. 2000)).

[46] *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 806 (9th Cir. 2004).

[47] C. Douglas Floyd & Shima Baradaran-Robison, *Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects*, 81 IND. L.J. 601, 639 (Spring 2006) (*Calder* "should at the most be interpreted to require the defendant to have committed a tortious act knowing to a substantial certainty that it will have its impact on the plaintiff in the forum state.").

[48] RESTATEMENT (SECOND) OF TORTS § 8A (1965); RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 1(b) (Nov. 1, 2005 draft).

3. The casino's Arizona-directed actions met the intent requirement of the *Calder* "effects" test. Thus, Arizona courts can constitutionally assert specific personal jurisdiction over the casino.

In fact, *Calder*'s intent requirement is broader—and far easier to satisfy—that may first appear. After all, while the *Calder* defendants meant to write an article with California as the focal point, their motive was surely only greater newspaper sales. No evidence ever even implied that they wanted to inflict *intentional* harm. And while they knew the article might cause harm in California, to them that was surely no more than a foreseeable side-effect. Here, the casino not only *knew* the likely harm to forum residents—it *intended* to serve the driver, to retrieve his car, to place him in that car, and to launch him onto the road to Arizona.[49] Under *Calder*, that intent supports jurisdiction.

Calder also emphasized that the defendants had "expressly aimed" conduct at California.[50] Some opinions hold that the expressly-aiming requirement is met when the defendant engages in "wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state."[51] Other opinions hold that the forum state itself must be the

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[49] RESTATEMENT (SECOND) OF AGENCY § 5.01(3) (2006) (defining notice); RESTATEMENT (SECOND) OF TORTS § 12(2) (1965) (same).

[50] *Calder v. Jones*, 465 U.S. 783, 789 (1984).

[51] *Bancroft & Masters, Inc. v. Augusta Nat'l*, 223 F.3d 1082, 1087 (9th Cir. 2000).

"focal point of the tort."[52] But the effects test applies either way, since: (1) the casino targeted Arizona residents by impairing the driver and sending him to Arizona and (2) the tortious focal point was Arizona.[53]

In assessing "purposeful direction," *Calder* stressed that the *National Enquirer* defendants "knew" the brunt of the injury "would be felt" in the forum state.[54] Moreover, in *Keeton v. Hustler Magazine*, filed the same day as *Calder*, this Court upheld jurisdiction in a New Hampshire libel case, although "the bulk of the harm done to petitioner occurred outside" the forum.[55] Here, *all* harm done to the Petitioners occurred in Arizona. And, from the casino's viewpoint, that was a substantially-certain risk and an entirely-predictable result.[56]

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[52] *See Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1080 (10th Cir. 1995).

[53] *See also Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997) (After *Calder*, there is "no serious doubt" that the state where a tort victim "suffers the injury may entertain a suit against the accused tortfeasor.").

[54] *Id.* at 789-90.

[55] *World-Wide Volkswagen Corp. v. Woodson*, 465 U.S. 770, 780 (1984).

[56] *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1486 (9th Cir. 1993) ("*Calder* thus established that personal jurisdiction can be predicated on (1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered—and which the defendant knows is likely to be suffered—in the forum state.").

In concluding that personal jurisdiction over the Florida defendants was proper because of the conduct's effects in California, this Court cited *World-Wide Volkswagen Corp. v. Woodson*, where an Audi sedan sold in New York to New York residents was struck in the rear by another car while the Audi's owners were driving through Oklahoma on their way to a new home in Arizona.[57] (The Audi's sellers had no idea that the car was destined for use in either distant state.) The Audi's gas tank and fuel system ruptured, causing severe burns to three of its passengers. *Calder* cited *World-Wide* because that case had held that a defendant cannot be sued in a foreign forum unless it reasonably should know that the effects of its acts might cause injury there. In *Latimer*, on the other hand, the casino and its staff *knew* where the effects would hit—in Arizona. Indeed, if they had helped make a defective car and shipped it into Arizona, there would be no question of personal jurisdiction if the car injured people there. In this case, they helped make an impaired driver and shipped him into Arizona. There should also be no question of personal jurisdiction based on that conduct's effects.

Calder also cited and relied on Section 37 of the Restatement (Second) of Conflicts, which supports personal jurisdiction for acts not done "with the intention of causing effects" in the forum state—*but* which could reasonably have been expected to do so.[58] The forum may assert jurisdiction over "the defendant if the effects which could have been anticipated and

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[57] *Keeton v. Hustler Magazine*, 444 U.S. 286 (1980).

[58] RESTATEMENT (SECOND) OF CONFLICTS § 37 cmt. a (1971).

which actually occurred are of a sort highly dangerous to persons or things. This is so even though the defendant has no other relationship to the state."[59] Since the anticipated Arizona effect was severe personal injury or death, Section 37's "effects" test anchors *Calder*'s analysis.[60]

4. Border bars and casinos negligently furnishing alcohol to their patrons create problems that the *Calder* "effects" test will help cure.

Finally, in this case the *Calder* effects test implicates other important public-policy concerns. After all, unregulated border bars and casinos create complex—and almost intractable—problems for cross-border areas. They include personal injuries, death, and an uncritical acceptance of drunken, unsafe conduct.[61] Dram-shop liability is vital in cross-border

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[59] *Id*. *See also Guidry v. U.S. Tobacco Co.*, 188 F.3d 619, 629 (5th Cir. 1999) (Under "*Calder*, the effects of torts committed outside the forum state that cause death or serious physical harm may also serve as minimum contacts with the forum for purposes of personal jurisdiction.").

[60] RESTATEMENT (SECOND) OF TORTS § 8A (1965); RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL HARM § 1(b) (Nov. 1, 2005 draft).

[61] *See, e.g.*, Sarah L.S. Gary, *et al.*, *Consideration of Driver Home County Prohibition and Alcohol-Related Crashes*, 35(5) ACCID. ANAL. & PREVEN. 641, 648 (2003) (Dry-county alcohol regulations may be counter-productive, since people seeking to avoid them drive farther under the influence of alcohol and thus increase their exposure to crashes.); James E. Lange, *et al.*, *South of the Border: A Legal Haven for Underage Drinking*, 97(9) ADDICTION

areas since it provides private compensation for tort victims *and* lowers public costs to care for them.[62] Moreover, research proves that civil tort liability is one of the most effective ways to control excess drinking and its effects.[63] Thus, Arizona public policy favoring dram-shop liability reinforces personal jurisdiction to

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1195, 1202 (Sept. 2002) ("The absence of supervision or formal controls not only prevents intervention with the drinker to limit heavy drinking, but also makes acceptance of drunken behavior without criticism more likely."); Robert B. Voas, *et al.*, *The Effects of Establishing Closing Hours in Juarez*, PAC. INST. FOR RES. AND EVAL. 3 (2006) ("The border provides a passage into a new environment where home community norms do not apply to drinkers, where short-term deviant behavior will go uncriticized, and where it can be rationalized as low risk because, insofar as drinking is concerned, it is not relevant to normal lifestyle.").

[62] *See, e.g.*, *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1333 (9th Cir. 1984) ("Arizona has a strong interest in ensuring that its citizens are fully compensated for their injuries, in part to protect the state's economic resources from unnecessary expenditures.").

[63] *See, e.g.*, Emily Stout, *et al.*, *Reducing Harmful Alcohol-Related Behaviors: Effective Regulatory Methods*, 61 J. STUD. ALCOHOL & DRUGS 402-12 (2000); Frank A. Sloan, *et al.*, *Liability, Risk Perceptions and Precautions at Bars*, 43 J.L. & ECON. 473, 499 (Oct. 2000) ("Given our results, and those of past studies, there is a strong rationale for relying on tort law as a method for controlling excessive alcohol use."); Frank A. Sloan, *et al.*, *Effects of Tort Liability and Insurance on Heavy Drinking and Drinking and Driving*, 38 J.L. & ECON. 49, 73 (April 1995) (The "traditional negligence rule" is more effective in reducing binge drinking than criminal sanctions.).

the federal Constitution's *maximum* extent.[64] And that is what this Court should also allow in this case.

These concerns are not theoretical. Almost two decades ago, as the Nevada border casinos were steadily expanding, practical experience had already shown that a disproportionately high number of alcohol-impaired drivers in Arizona had received free alcoholic drinks at Nevada border casinos. The drivers were then entering Arizona and harming Arizona residents—as happened here.[65] Indeed, in 2008 alone, Arizona appellate courts refused to apply the *Calder* effects test in three dram-shop cases involving negligent alcohol service by Nevada border bars and casinos. Including this case, the toll in those three cases was one motorcyclist with an amputated leg and other life-threatening injuries—and three dead.[66] The threat of Arizona civil dram-shop liability might have

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[64] *Cohen v. Barnard, Vogler & Co.*, 199 Ariz. 16, 18, 13 P.3d 758, 760 (App. 2000) ("Arizona's long-arm statute is very broad and is intended to allow Arizona to exert personal jurisdiction over a non-resident litigant to the maximum extent permitted by the United States Constitution.").

[65] *Hoeller v. Riverside Resort Hotel*, 169 Ariz. 452, 454, 820 P.2d 316, 318 (App. 1991).

[66] Two died in *Latimer*. A motorist over-served at a Nevada border bar ran down and killed a pedestrian in Bullhead City, Arizona in *Womack v. KC Arena, Inc.*, Ariz. Ct. App. Case No. 1 CA-CV 07-0127, 2008 WL 3915959 (Feb. 26, 2008) *rev. denied*, Oct. 28, 2008. And a Nevada casino employee over-served at her own casino caused a crash in Arizona leading to amputation of a motorcyclist's leg—and other life-threatening injuries—in *Cook v. Avi Casino Enters., Inc.*, Ariz. Ct. App. Case No. 1 CA-CV 07-0110, 2008 WL 4108121 (March 20, 2008), *rev. denied*, Oct. 28, 2008, *pet. for writ of cert. filed*, Jan. 22, 2009

prevented those tragedies. But Arizona courts believed that they could not assert specific personal jurisdiction. This Court should accept this Petition and hold that the *Calder* effects test is not a dusty anachronism—but a fair, logical, and *controlling* doctrine allowing specific personal jurisdiction in these types of cases over otherwise uncontrolled and irresponsible border casinos and bars.

CONCLUSION

Petitioners respectfully ask the Court to grant their Petition for Writ of Certiorari, to vacate the contrary Arizona appellate decisions, to vacate the dismissal entered against them, and to remand this case to Arizona superior court for trial on the merits of their claims.

Respectfully submitted,

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APPENDIX

APPENDIX A

ARIZONA COURT OF APPEALS

Case No. 1 CA-CV 07-0417

[Dated June 24, 2008]

Sandy **LATIMER**, individually and as surviving spouse of Roy Latimer, deceased; Lee Latimer; Kristi Latimer; Dawn Latimer; Allison Stopke, as parent and natural guardian of Kip Stopke, a minor; and Julie A. Ruiz, individually and as surviving spouse of Eric Ruiz, deceased,

Plaintiffs / Appellants,

v.

Donald Joseph **LAUGHLIN** dba Riverside Resort & Casino,

Defendants / Appellees.

[2008 WL 2584451]

Appeal from the Superior Court in Mohave County
Cause No. CV 2004-7025
The Honorable Randolph A. Bartlett, *Judge*.

AFFIRMED

Wachtel Biehn & Malm by Denis R. Malm, Kenneth E. Moyer, Lake Havasu City, Attorneys for Plaintiffs/Appellants Latimer/Stopke.

Steven E. Mundy, Lake Havasu City, Attorney for Plaintiff/Appellant Ruiz.

Bremer Whyte Brown & O'Meara, LLP by Jeffrey D. Holland, John J. Belanger, Phoenix, Attorneys for Defendants/Appellees.

MEMORANDUM DECISION

NORRIS, Judge.

Sandy Latimer, Lee Latimer, Kristi Latimer, Dawn Latimer, Allison Stopke, and Julie A. Ruiz ("Plaintiffs") appeal the superior court's dismissal of their claims against Donald Joseph Laughlin d.b.a. Riverside Resort & Casino ("Riverside Casino") for lack of personal jurisdiction. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

On the evening of February 20, 2003, Daniel Brackney drove from Arizona to Laughlin, Nevada; left his vehicle in the possession of Riverside Casino; and consumed alcohol at the Riverside Casino into the morning of February 21, 2003. Riverside Casino security personnel escorted Brackney from the premises and allegedly put him in his vehicle knowing he was severely impaired. After leaving the Riverside Casino, Brackney drove on Highway 68 in Mohave

County, Arizona, and struck a vehicle. Eric Ruiz and Roy Latimer, passengers in that vehicle, died as a result of the accident. At the time of the accident, Brackney, Ruiz, and Latimer were all Arizona residents.

Plaintiffs brought suit in Mohave County, Arizona, against Brackney, Riverside Casino, and Riverside Resort and Casino, Inc. ("Riverside, Inc."). Riverside, Inc., a Nevada corporation, leases its premises to Riverside Casino for the operation of the casino. The suit alleged claims in tort arising out of the accident.

In October 2006, Riverside, Inc. moved for summary judgment asserting Arizona did not have personal jurisdiction-either general or specific-over it. Riverside, Inc. and Riverside Casino then simultaneously filed a separate motion to dismiss for lack of personal jurisdiction. In their response to the motion to dismiss, Plaintiffs identified several contacts between "Riverside"[1] and Arizona which, they asserted, established either general or specific jurisdiction.

The superior court ruled on "Riverside Resort and Casino's Motion for Partial Summary Judgment" and found it did not have personal jurisdiction. Although not clear from the text of the minute entry, the court, in a subsequent judgment, clarified that its ruling applied only to Riverside, Inc.

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[1] Although the caption of the motion for summary judgment indicated it only pertained to Riverside, Inc., the text of the motion was imprecise as to which defendant-Riverside, Inc. or Riverside Casino-was moving for summary judgment. Thus, the Plaintiffs' response addressed both entities together as "Riverside."

After the court ruled on the summary judgment motion, it heard oral argument on the motion to dismiss for lack of personal jurisdiction which, by then, pertained only to Riverside Casino. At the close of argument, the superior court granted the motion to dismiss and entered a separate judgment for Riverside Casino. Plaintiffs timely appealed the judgment entered in favor of Riverside Casino. We have jurisdiction pursuant to Article 6, section 9 of the Arizona Constitution and Arizona Revised Statutes sections 12-120.21 and -2101 (2003).

DISCUSSION

"We review de novo a trial court's dismissal for lack of personal jurisdiction, viewing the facts in the light most favorable to the plaintiffs." *Rollin v. William V. Frankel & Co., Inc.*, 196 Ariz. 350, 352, ¶ 5, 996 P.2d 1254, 1256 (App. 2000) (citing *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 567, 569, 892 P.2d 1354, 1356, 1358 (1995)).

Arizona may exercise personal jurisdiction over a nonresident defendant "to the maximum extent permitted by the" Arizona and United States Constitutions. Ariz. R. Civ. P. 4.2(a). Personal jurisdiction can only be exercised when a defendant has "sufficient minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Williams v. Lakeview Co.*, 199 Ariz. 1, 3, ¶ 6, 13 P.3d 280, 282 (2000) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 320, 66 S. Ct. 154, 160, 90 L. Ed. 95 (1945) ("*Williams II*"). Personal jurisdiction, either general or specific, requires a defendant to have "purposefully established 'minimum contacts' in"

Arizona. *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183, 80 L.Ed.2d 528 (1985)).

I. General Jurisdiction

"General jurisdiction subjects the defendant to suit on virtually any claim, '[e]ven when the cause of action does not arise out of or relate to the [defendant's] activities'" in Arizona. *Rollin*, 196 Ariz. at 352-53, ¶ 9, 996 P.2d at 1256-57 (quoting *Batton v. Tennessee Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270, 736 P.2d 2, 4 (1987) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404, 411 (1984))) (internal quotation marks omitted). General jurisdiction applies only when the defendant has "substantial" or "continuous and systematic" contacts with Arizona. *Id.* at 353, ¶ 9,996 P.2d at 1257 (quoting *Batton*, 153 Ariz. at 270, 736 P.2d at 4). "The level of contact required to show general jurisdiction is quite high." *Williams II*, 199 Ariz. at 3, ¶ 6, 13 P.3d at 282.

When confronted with a situation analogous to this one, this court held Arizona did not have general jurisdiction over a Nevada casino. In *Williams*, passengers in a car brought suit against a casino after the casino served alcohol to their driver, who then injured them in a car accident as they left the casino. *Williams v. Lakeview Co.*, 195 Ariz. 468, 470, ¶ 2, 990 P.2d 669, 671 (App. 1999) ("*Williams I*"). The casino

> regularly advertised in a local Arizona newspaper . . . soliciting Arizona residents to visit its Nevada Casino, . . . a substantial number of [the casino's] customers were Arizona

> residents, . . . [the casino] employed seventeen Arizona residents in its Casino in Nevada, and [it] actively solicited Arizona tour bus companies to bring passengers to its Casino.

Williams I, 195 Ariz. at 471-72, ¶ 11, 990 P.2d at 672-73. We concluded these contacts were "not sufficiently substantial or continuous and systematic to support the assertion of general jurisdiction." *Id.* at 472, ¶ 11, 990 P.2d at 673. We find *Williams* to be instructive here.

In the superior court, and on appeal, Plaintiffs asserted numerous contacts between "Riverside," see supra note 1, and Arizona. We have reviewed the record closely. Our detailed examination shows most of these contacts were attributable to the dismissed defendant, Riverside, Inc.[2] This distinction is

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[2] The record contains a motion to dismiss from Riverside, Inc. filed in March 2005 and withdrawn in December 2005 and two separate responses to interrogatories by Riverside, Inc. filed in 2005 and 2006. The withdrawn motion to dismiss stated Riverside, Inc. had "entered into a lease agreement under the terms of which it leases a parking lot facility on the Arizona side of the river." Attached to the withdrawn motion to dismiss was an affidavit from its corporate attorney, Hermon B. Walker, which stated Riverside, Inc. "has no physical presence in any state other than the state of Nevada; has no offices in the state of Arizona; owns no property in the state of Arizona; and employs no agents in the State of Arizona." Instead, Riverside, Inc. "is a Nevada corporation having its sole, only and principal place of business at 1650 Casino Drive, Laughlin, Nevada," has employees who live in Arizona, and "[t]he only business owned and operated by [Riverside, Inc.] is a hotel and casino."

The 2005 interrogatory responses stated Riverside, Inc. was "a party [to] a lease contract ... for hangar space rental at the Laughlin/Bullhead Airport." In addition, Riverside, Inc. stated it

significant. Not only have Plaintiffs not appealed Riverside, Inc.'s dismissal from the case, but they have not argued (nor did they in the superior court) that the relationship between Riverside, Inc. and Riverside Casino was so interrelated that the alleged contacts between Arizona and Riverside, Inc. could be imputed to Riverside Casino. *Cf. Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 425 (9th Cir. 1977) ("It may also be just and equitable in some cases to treat two separately incorporated entities as one where the corporate vehicle is employed as a device by which to conduct 'continuous and systematic' activities in a state without subjecting the out-of-state corporation to the general jurisdiction of the forum.")

As to Riverside Casino, the record reveals it had very few contacts with Arizona. It had "accounts with JP Morgan Chase Bank, First Union Bank, and Bank of America-all located in Bullhead City, Arizona," and

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had 1,543 employees with an Arizona address and maintained transportation services from Arizona to Nevada. Riverside, Inc. further stated its average annual advertising expenditure for years 2002 through 2004 was $1.6 million dollars and it had two billboards in old Bullhead City, Arizona and one billboard near Wickieup, Arizona. Finally, "on a regular basis [Riverside, Inc.] does business with vendors of goods and services, financial institutions, and professional entities all of which are located in the State of Arizona, as does any resort property in Laughlin, Nevada. This list would be so extensive that, for all practical purposes, it would involve copying at least 70% of the Yellow Pages of the Bullhead City, Arizona telephone directory."

The 2006 responses stated Riverside, Inc. owned no land in Arizona; maintained a bank account at JP Chase Morgan Bank in Bullhead City, Arizona; "had no involvement with the operations of the Casino or the employment of any personnel," and had "not engage[ed in] business activities in Arizona" such as telephone reservations or advertising.

it "individually own[ed] an Airport Hanger [sic] at the Laughlin-Bullhead International Airport."

Plaintiffs also asserted Riverside Casino controlled and operated a parking lot in Arizona ("Arizona parking lot") for its employees and customers.[3] In addition, Plaintiffs asserted Riverside Casino had an Arizona phone number and offered its patrons membership in a local discount club where the majority of discounts are for businesses in Bullhead City, Arizona, and Kingman, Arizona. They also argued Donald J. Laughlin had built a bridge across the Colorado River from Nevada to Arizona. Finally, they asserted Riverside Casino offered wedding packages on a boat: Riverside Casino provided the minister and its website had information on obtaining an Arizona marriage license, not a Nevada license.[4]

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[3] This assertion rested largely on an affidavit filed in another case by Riverside Casino's Manager of Security. In his affidavit, the manager stated he was "personally aware that the Riverside Resort Hotel & Casino ... own[ed] a parking lot on the Arizona side of the Colorado River." As phrased, it is not clear whether the manager was referring to Riverside, Inc. or Riverside Casino. If referring to Riverside Casino, this assertion would be contrary to the withdrawn motion to dismiss. *See supra* note 2. However, we do not need to assess the significance of this inconsistency because Plaintiffs used this affidavit to assert only that "Riverside," see *supra* note 1, "controlled and operated" the Arizona parking lot.

[4] Plaintiffs also asserted "Donald J. Laughlin owns or has a beneficial interest in many parcels of real property." In support of this, however, Plaintiffs only provided information showing the "Donald J. Laughlin Family Trust" was a member of a limited liability corporation that owned land in Mohave County, Arizona. The record is not sufficiently developed to support Plaintiffs' assertion regarding property ownership.

These contacts between Riverside Casino and Arizona show Riverside Casino conducted some activities in or touching Arizona. However, as in Williams I, the record shows Riverside Casino "did not regularly conduct business in Arizona, nor did it have any agents, offices, property, or other physical presence within Arizona ." *Williams I*, 195 Ariz. at 472, ¶ 11, 990 P.2d at 673. Although Riverside Casino may have used and controlled the Arizona parking lot, see supra note 3, mere use or control, in addition to Riverside Casino's limited other contacts, is not enough to establish general jurisdiction. *See, e.g.*, *Shaffer v. Heitner*, 433 U.S. 186, 209, 97 S. Ct. 2569, 2582, 53 L.Ed.2d 683 (1977) ("[A]lthough the presence of the defendant's property in a State might suggest the existence of other ties among the defendant, the State, and the litigation, the presence of the property alone would not support the State's jurisdiction."). Thus, Riverside Casino's contacts were not "sufficiently substantial or continuous and systematic" to confer general jurisdiction over Riverside Casino. *Williams I*, 195 Ariz. at 472, ¶ 11, 990 P.2d at 673; *see also Burger King Corp.*, 471 U.S. at 475, 105 S.Ct. at 2183 (no general jurisdiction when contacts are "random," "fortuitous," or "attenuated"); *Westphal v. Mace*, 671 F. Supp. 665, 667 (D.Ariz. 1987) (no general jurisdiction found over non-Arizona defendant for lawsuit concerning Nevada accident when defendant merely advertised in Arizona, sponsored travel packages through Arizona travel agents, and published a toll-free phone number in Arizona phone directories).

II. Specific Jurisdiction

If an Arizona court cannot exercise general jurisdiction over a non-resident defendant, it "may still find specific jurisdiction if: (1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the defendant's contact with the forum; and (3) the exercise of jurisdiction is reasonable." *Williams II*, 199 Ariz. at 3, ¶ 7, 13 P.3d at 282. The "plaintiff's claim must result from alleged injuries that arise out of or relate to [the defendant's] . . . activities." *Id.* at 4, ¶ 11, 13 P.3d at 283 (quoting *Burger King Corp.*, 471 U.S. at 472, 105 S.Ct. at 2182 (quoting *Helicopteros*, 466 U.S. at 414, 104 S.Ct. at 1872)) (alterations in original; internal quotations omitted). The "key to exercising specific jurisdiction" is the "requirement that a nexus exist between a defendant's activities in the forum state and a plaintiff's cause of action." *Id.*

As discussed above, in *Williams I*, we concluded Arizona did not have general jurisdiction but held the facts of the case established specific jurisdiction. 195 Ariz. at 472-74, ¶¶ 11-21, 990 P.2d at 673-75. On review, our supreme court reversed on the specific jurisdiction issue. *Williams II*, 199 Ariz. 1, 4-5, ¶ 13, 13 P.3d 280, 283-84. The supreme court used a "but for" test to evaluate specific jurisdiction. Under this test, "a nexus exists [between the defendant and the forum state] if a plaintiff's injury would not have occurred but for a defendant's forum activities." *Id.* at 4, ¶ 12, 13 P.3d at 283. However, in Williams II, the plaintiffs

> d[id] not assert that their visit to the casino resulted from any of [the casino's] contacts with Arizona. They did not visit the casino after seeing or in response to an advertisement, and they never traveled to Nevada on a tour bus. Their injuries did not arise out of or relate to [the casino's] employment relationship with or hotel service to Arizona residents.

Id. at 4, ¶ 13, 13 P.3d at 283. Plaintiffs' "failure to show any causal connection between [the casino's] Arizona activity and their claim [wa]s fatal to the plaintiffs' argument" and, thus, Arizona did not have specific jurisdiction over the Nevada casino. Id. at 4-5, ¶ 13,13 P.2d at 283-84.

Here, Brackney testified in his deposition that he was familiar with Riverside Casino's advertising because it was "pretty much everywhere, everywhere you go." though he had visited Riverside Casino before, Brackney was not a member of Riverside Casino's promotional club at the time of the visit to the Riverside Casino. Brackney testified he had often parked his car in the Arizona parking lot and had often used the boat shuttle from the Arizona parking lot to Riverside Casino. However, on the evening of February 20, 2003, Brackney had visited the Riverside Casino because there was "[n]othing going on where we were at" and Riverside Casino's "Loser's Lounge" was the first casino past the bridge leading from Bullhead City, Arizona to Laughlin, Nevada.

Although Brackney was familiar with Riverside Casino, there is no evidence in the record showing Riverside Casino's actions in Arizona caused any of Brackney's actions on the night of the accident.

Instead, Brackney's deposition shows he went to Riverside Casino only because it was convenient. Plaintiffs have not shown Brackney would not have gone to Riverside Casino on February 20, 2003, "but for" Riverside Casino's activity in Arizona. Because Plaintiffs have not shown a "causal connection" between Riverside Casino's activity in Arizona and Brackney's actions that caused the Plaintiffs' claims and injuries, Arizona does not have specific jurisdiction over Riverside Casino. *See Williams II*, 199 Ariz. at 4-5, ¶ 13, 13 P.3d at 283-84.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the superior court dismissing Plaintiff's complaint against Riverside Casino for lack of personal jurisdiction.

ONCURRING: ANN A. SCOTT TIMMER, Presiding Judge and MICHAEL J. BROWN, Judge.

APPENDIX B

[Seal SUPREME COURT
STATE OF ARIZONA]

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October 29, 2008

RE: SANDY LATIMER et al v. LAUGHLIN/RIVERSIDE RESORT
Arizona Supreme Court
No. CV-08-0259-PR
Court of Appeals Division One
No. 1 CA-CV 07-0417
Mohave County Superior Court
No. CV 2004-7025

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 28, 2008, in regard to the above-referenced cause:

ORDERED: Petition for Review (Oral Argument Requested) = DENIED.

Record returned to the Court of Appeals, Division One, Phoenix, this 29th day of October, 2008.

Rachelle M. Resnick, Clerk

TO:
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(2)

No. 08-944

IN THE

Supreme Court of the United States

SANDY LATIMER, Individually and as Surviving Spouse of ROY LATIMER, Deceased, *et al.*,

Petitioners,

v.

DONALD JOSEPH LAUGHLIN dba RIVERSIDE RESORT & CASINO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ARIZONA, DIVISION ONE

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioners have presented compelling reasons to grant the Petition, where the Arizona Court of Appeals' June 24, 2008 Memorandum Decision, which found Respondent's contacts with the forum were not "sufficiently substantial or continuous and systematic" to confer general personal jurisdiction, does not conflict with a decision of this Court, a United States Court of Appeals or any other state court of last resort, and where Petitioners do not claim that the Arizona Court of Appeals' ruling implicates an important federal question that has not been settled by this Court.

II. Whether Petitioners have presented compelling reasons to grant the Petition, where the Arizona Court of Appeals' June 24, 2008 Memorandum Decision, which found no "causal connection" between Respondent's activity in Arizona and Peitioners' claim in order to support specific personal jurisdiction, does not conflict with a decision of this Court, a United States Court of Appeals or any other state court of last resort, and where Petitioners do not claim that the Arizona Court of Appeals' ruling implicates an important federal question that has not been settled by this Court.

III. Whether Petitioners have presented compelling reasons to grant the Petition, where the argument regarding application of the "effects test" set forth in *Calder v. Jones*, 465 U.S. 783 (1984) was not raised in the trial court and, therefore, is waived on appeal.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUI REME COURT RULE 29.6

Respondent Donald Joseph Laughlin d/b/a Riverside Resort & Casino does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

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321 U.S. 414 (1944) 3, 16

Statutes, Rules and Constitutional Provisions

U.S. Const. amend XIV 1, 3

Sup. Ct. R. 10 ..... 1, 7

Ariz. R. Civ. P. 4.2(a) 1

JURISDICTION

Arizona courts may exercise personal jurisdiction over a nonresident defendant to the maximum extent permitted by the Arizona and United States Constitutions. Ariz. R. Civ. Pro. 4.2(a). However, when an Arizona court refuses to assert jurisdiction on state law grounds, no federal issue is raised. Only when jurisdiction is asserted, calling into question the extent and reach of the 14th Amendment, does the issue fall in the purview of the federal courts.

Accordingly, Arizona's determination not to assert jurisdiction pursuant to the Arizona Constitution is an adequate, independent determination of state law and does not require the resolution of a federal question. Petitioners have not provided any compelling reasons to deviate from this Court's long-standing policy of respecting state court decisions (*see Michigan v. Long*, 463 U.S. 1032, 1041 (1983)); therefore, jurisdiction should be declined.

INTRODUCTION

Petitioners have presented no "compelling reasons" for their Petition for a Writ of Certiorari to be granted ("Petition"). *See* Sup. Ct. R. 10. Specifically, Petitioners fail to demonstrate that the Arizona Court of Appeals' concluding Respondent's contacts with the forum were not "sufficiently substantial or continuous and systematic" to confer general personal jurisdiction conflicts with a decision of this Court, a United States Court of Appeals or any other state court of last resort. *See* Sup. Ct. R. 10(a) – (c). Nor do Petitioners establish

the Arizona Court of Appeals' holding that no "causal connection" existed between Respondent's activity in Arizona and Petitioners' claim in order to support general personal jurisdiction conflicts with a decision of this Court, a United States Court of Appeals or any other state court of last resort. *See id.* Further, Petitioners do not claim that the Arizona Court of Appeals' ruling implicates an important federal question that has not been settled by this Court. *See id.*

While every Petition represents a party's third or fourth "bite at the apple," here, Petitioners have leveled the entire orchard. Petitioners have newly associated counsel who also represented the claimants in two separate border-casino cases petitioned to the Arizona State Supreme Court in late 2008 (both of which were also denied review).[1] However, this is not counsel's first appearance in this matter. Despite involvement with the other border-casino matters, counsel filed an *Amici Curiae* brief with the Arizona Supreme Court in this matter. Now, after review was denied, counsel has associated in for Petitioners.[2]

This point is significant because Petitioners failure to argue for application of the "effects test" set forth in *Calder v. Jones*, 465 U.S. 783 (1984) in the trial court,

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1. *Cook v. Avi Casino Enterprise, Inc.*, Ariz. Ct. App. Case No. 1 CA-CV 07-0110, 2008 WL 4108121 (March 28, 2008), *rev. denied*, Oct. 28, 2008, *pet. for writ of cert. filed Jan. 22, 2008*, and *Womack v. KC Arena, Inc.*, Ariz. Ct. App. Case No. 1 CA-CV 07-0127, 2008 WL 3915959 (February 26, 2008), *rev. denied*, Oct. 28, 2008.

2. Mr. Abney has also filed a Petition for Writ of Certiorari in the *Cook* matter.

let alone at any previous appellate level, constitutes waiver on appeal. *See Yakus v. United States*, 321 U.S. 414, 471 (1944). Trial counsel never raised the argument—not before the trial court, not before the court of appeals and not before the state supreme court. The first and only time the argument was mentioned was by newly associated counsel, as *Amicus* counsel, to the Arizona Supreme Court. Counsel's recent association is a poorly veiled attempt to circumvent the anticipated waiver argument and overcome trial counsels' prior failures to raise the issue.

Notwithstanding, Petitioners' continued failure to acknowledge the true nature of the appeal is disingenuous. Petitioners have asked every court before which they have appeared to effectively overrule the opinion in *Williams v. Lakeview Co.*, 199 Ariz. 1, 13 P.3d 280 (2000) ("*Williams II*"). In its place, Petitioners have implored the courts to embrace the *Calder* "effects test." Notably, *Calder* was on the books for 16 years before the Arizona Supreme Court rendered its decision in *Williams II*. None of the arguments or "evidence" submitted by Petitioners supports the overturning of the controlling *nine-year-old* case or the curtailing of due process rights afforded non-resident defendants by the Fourteenth Amendment of the United States Constitution.

Put succinctly, Petitioners have utterly failed to carry their burden of demonstrating any compelling reason for this Court to grant the Petition. Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

I. Background

This matter involves claims for a fatal automobile accident which occurred in the early morning hours of February 21, 2003. While traveling on State Highway 68 in Golden Valley, Arizona, Daniel Brackney ("Brackney") unsuccessfully attempted to pass a passenger van, resulting in a collision. The collision caused the van to lose control and resulted in the deaths of both Roy Latimer and Eric Ruiz.

Decedents' families brought this wrongful death claim against Brackney and the casinos he allegedly visited during the evening of February 20, 2003.[3] Petitioners alleged that, in the late evening hours and early morning hours before the incident, Brackney imbibed alcoholic beverages on the casino's premises to the extent that Brackney became sufficiently impaired and was ultimately unable to operate his vehicle safely. Petitioners further alleged that the casino not only provided Brackney with alcohol, but that it escorted Brackney off the property and put him in his vehicle knowing that he was under the influence. (R. 63, pages 16-18)

Brackney testified that he visited the casino on the evening of February 20, 2003 because there was "[n]othing going on where we were at." (R.104, Exhibit K). Brackney indicated his intent was to visit one of the

3. Another casino, Flamingo-Laughlin, was dismissed by minute entry order on January 14, 2005. (Record Item ("R.") 30).

casinos and then visit a bar in Laughlin. *Id.* Brackney chose this casino as opposed to another casino because it had the "Losers Lounge" and was the first casino past the bridge. *Id.* Brackney did not carry a gaming card because he was not a member of the casino's players club. *Id.*

Throughout the litigation, Respondent contested all of these facts, including whether Brackney ever actually visited the casino on the evening in question. However, for the purposes of the motion to dismiss below, as well as the appeal, the allegations are assumed to be true.

These facts are not in dispute. The accident occurred in Mohave County, Arizona. Brackney and both decedents were Arizona residents. Respondent operates its business in Laughlin, Nevada. Respondent does not operate any businesses in Arizona but does advertise in Arizona and throughout Southern Nevada. The purported provision of alcohol and alleged release of Brackney's vehicle occurred in Nevada.

II. Procedural History

In their February 11, 2004 Complaint, Petitioners asserted a single claim for "tort - motor vehicle" based on negligence. (R. 1). The initial Complaint named only two defendants: Brackney and the Riverside Resort and Casino, Inc. The Complaint was subsequently amended on four separate occasions: April 8, 2004; April 30, 2004; July 22, 2005; and September 25, 2005. (R.s 3, 9, 59, and 63). The last of the amendments added Respondent as a Defendant. (R. 63).

On October 13, 2006, Respondent filed a motion to dismiss for lack of personal jurisdiction. (R. 99). At the February 21, 2007 hearing, following conclusion of oral argument by counsel, Judge Bartlett granted the motion and dismissed Respondent for lack of personal jurisdiction. (R. 118). The superior court's ruling was memorialized in a February 21, 2007 minute entry order. Thereafter, on March 7, 2007, Respondent filed its proposed form of judgment, which included Rule 54(b), Arizona Rules of Civil Procedure, language that it was to be a final judgment. (R. 120). The trial court entered formal and final judgment granting the motion to dismiss on April 25, 2007. (R. 121). Petitioners filed their notices of appeal on May 23, 2007 and May 25, 2007. (R. 124 and 127).

Division One of the Arizona Court of Appeals affirmed the trial court's dismissal for lack of personal jurisdiction. *See* Appendix A to the Petition for Writ of Certiorari, Arizona Court of Appeals' June 24, 2008 Memorandum Decision "Memorandum Decision"). Thereafter, the Arizona Supreme Court denied the Petition for Review. *See* Appendix B to the Petition for Writ of Certiorari, Arizona Supreme Court's October 28, 2008 Order denying Petition for Review.

III. Alleged Contacts With The Forum

Despite Petitioners continued representations to the contrary, the material facts, as related by the Court of Appeals after a detailed examination of the record, demonstrate that most of the forum contacts alleged by Petitioners are not attributable to Respondent. *See* Memorandum Decision at 6, ¶ 11. Rather, the record reveals that Respondent had very few contacts with Arizona. *See id.* at 7, ¶ 12.

Accepting Petitioners' assertions as true, the Court found Respondent to have the following contacts with the forum. Respondent had accounts in Bullhead City, Arizona with JP Morgan Chase Bank, First Union Bank and Bank of America. *See id.* at 7-8, ¶ 12. Respondent leased an airport hangar at the Laughlin-Bullhead International Airport. *See id.* at 8, ¶ 12. Respondent had an Arizona phone number and offered its patrons discounts to unaffiliated businesses located in Arizona. *See id.* at 8, ¶ 13. Petitioners also argued that Respondent built a bridge across the Colorado River and that Respondent offered wedding packages on a boat, with instructions for obtaining an Arizona marriage license on its website. *See id.* at 8, ¶ 13.

The Court of Appeals found the remaining alleged contacts to be either attributable to Riverside, Inc., the previously dismissed defendant (*See id.* at 6, ¶ 11, fn. 2), or undeveloped/unsupported by the record (*See id.* at 8, ¶ 13 nn.3 and 4).

REASONS FOR DENYING THE PETITION

The decision below does not conflict with a decision of this Court, a United States Court of Appeals or any other state court of last resort nor does the ruling implicate an important federal question that has not been settled by this Court. Accordingly, Petitioners have not met their burden of demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

I. Constitutional Due Process Limits Arizona's Assertion Of Jurisdiction Over Non-Resident Defendants.

Petitioners argue that, in order to facilitate efforts to curb drunk-driving and compensate Arizona plaintiffs, a Nevada business serving alcohol near the Arizona border should simply expect to be subject to jurisdiction in Arizona. This expectation is based on the possibility that at least some customers will be Arizona residents who will cause automobile accidents upon their return to Arizona. In seeking review, Petitioners ask the Court to focus on Arizona's interest in protecting its citizens, concern for compensating Arizona plaintiffs and the foreseeability that an extraterritorial act could cause injury in Arizona.

None of those factors support the exercise of jurisdiction in this matter. The application of personal jurisdiction based on the factors propounded by Petitioners would require this Court to ignore not only its own opinions but also that of the Arizona Supreme Court in *Williams II*. Foreseeability of an extraterritorial act causing injury in the forum state is not sufficient to exercise personal jurisdiction under the due process clause. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1990). Moreover, unilateral activity of those claiming some relationship with the non-resident defendant is, likewise, insufficient to establish contact with the forum. *See Hanson v. Denckla*, 375 U.S. 235, 253 (1958). Further, none of the "evidence" submitted by Petitioners supports the contention that subjecting Nevada businesses to Arizona jurisdiction will significantly curb drunk-driving

in the State of Arizona. Finally, reliance upon purported policy considerations does not justify ignoring a defendant's constitutional due process rights.

In order to uphold those due process rights, the focus in determining whether personal jurisdiction may be asserted against a non-resident is on the defendant's purposeful contacts with the forum state. The due process clause is an instrument of interstate federalism. *See World-Wide Volkswagen*, 444 U.S. at 294. It may divest the forum state of the power to render a valid judgment even where the defendant would suffer minimal or no inconvenience from being forced to litigate before the court of another state, where the foreign state has a strong interest in applying its law to the controversy or where the foreign state is the most convenient location for litigation. *Williams II*, 199 Ariz. at 3, 13 P.3d at 282; *see also World-Wide Volkswagen*, 444 U.S. at 295. The critical focus must be on the relationship between the defendant, the forum and the litigation. *See Hanson*, 375 U.S. at 253. That relationship must be defined by the defendant's contacts with the forum state, not by the defendant's contacts with residents of the forum. *See id.*

Despite Petitioners' attempts to confuse the issue, "the constitutional touchstone remains whether the defendant purposely established 'minimum contacts' in the forum state." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). Petitioners have not met the burden of establishing a *prima facie* case that Respondent may be haled into court in Arizona. To rule otherwise would offend traditional notions of "fair play and substantial justice." *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

II. The Application Of *Williams II* Below Was Appropriate And Correct.

A. Petitioners Abandon Any Attempt To Distinguish This Matter From The Arizona Supreme Court's Decision In *Williams II*.

Notably, the Petition fails to so much as allude to the controlling Arizona authority regarding jurisdiction over border casinos. In fact, Petitioners refusal to mention, cite, or otherwise discuss the *Williams II* decision anywhere in their brief is disingenuous and a disservice to this Court. Petitioners' failure to distinguish *Williams II* creates a void of any compelling reasons to grant review.

Notwithstanding, *Williams II* remains the controlling authority which governs this case. Despite representations to the contrary in the courts below, the appellate court correctly applied Arizona law, including *Williams II*, in determining that Respondent's limited contacts with Arizona did not support the exercise of personal jurisdiction. To hold otherwise would violate Respondent's due process rights. Review is inappropriate and should be denied.

B. Petitioners Have Not Established General Personal Jurisdiction Because Respondent's Contacts With Arizona Are Not Sufficiently Continuous And Systematic.

"A non-resident defendant is subject to general jurisdiction when the defendant's contacts with the forum state are substantial or continuous and systematic enough that the defendant may be haled into

court in the forum, even for claims unrelated to the defendant's contacts with the forum." *Williams II*, 199 Ariz. at 3, 13 P.3d at 282 (*citing Helicopteros Nacionales de Colmiba S.A. v. Hall*, 466 U.S. 408, 414 (1984)). Because general jurisdiction subjects the defendant to suit on virtually any claim, even when the cause of action does not arise out of or relate to the defendant's activities in the forum state, the level of contact required to show general jurisdiction is quite high. *Williams II*, 199 Ariz. at 3, 13 P.3d at 282; *see also Batton v. Tennessee Farmers Mutual Ins. Co.*, 153 Ariz. 268, 270, 736 P.2d 2, 4 (1987) (*citing Helicopteros*, 466 U.S. at 414).

Williams involved a casino located within a few miles of the state border which conducted no business in Arizona, owned no property in Arizona and did not list a telephone number in any Arizona directory. *Williams v. Lakeview*, 195 Ariz. 468, 473, 990 P.2d 669, 674 (App. 1999) ("*Williams I*"). Furthermore, all of the casino's partners were residents of Nevada. *Id.* The *Williams I* court accepted as true plaintiffs' assertions that the casino solicited Arizona residents via regular advertisements in an Arizona newspaper, that a substantial number of the casino's customers were Arizona residents, that the casino employed Arizona residents and that the casino actively solicited Arizona tour bus companies to bring passengers to the casino. *Id.* at 471-72, 990 P.2d at 672-73. The court concluded, however, that these activities were not sufficiently substantial or continuous and systematic to confer general jurisdiction over the casino. *Id.* at 472, 990 P.2d at 673 (*citing Burger King*, 471 U.S. at 475; *also citing Westphal v. Mace*, 671 F. Supp. 665, 667 (D. Ariz. 1987)).

The *Williams II* court specifically quoted and approved *Williams I* with regard to general jurisdiction. The Arizona Supreme Court reasoned that "[t]he level of contact required to show general jurisdiction is quite high." *Williams II*, 199 Ariz. at 3, 13 P.3d at 282. The *Williams II* court cited the court of appeals holding "that [the boarder casino's] contacts with Arizona were not sufficiently continuous and systematic to permit Arizona to exercise general jurisdiction." *Id.* at 3 n.2, 13 P.3d at 282. Further, the court noted that "plaintiffs did not file a cross-petition for review from that holding." *Id.* Therefore, the Arizona court of appeals ruling regarding general jurisdiction in *Williams I*, unchallenged in the Arizona Supreme Court, remains valid and controlling.

Here, Petitioners spend a mere page and a half discussing general personal jurisdiction. Just short of waiving the argument in its entirety, the half-hearted discussion offers nothing for this Court's consideration. Petitioners' allusion to Respondent's alleged contacts with the forum continues to misinterpret and misrepresent the record on appeal as well as the opinions rendered by the courts below. Notwithstanding, these alleged contacts were considered and rejected by the Arizona Court of Appeals.

The appellate court found that Respondent "did not regularly conduct business in Arizona, nor did it have any agents, offices, property, or other physical presence within Arizona." *See* Memorandum Decision at 9, ¶ 14. Respondent's contacts with Arizona were limited in nature and, in terms of quality, merely served as collateral support to its Nevada operation. The *quality*

of the contacts, not the quantity of contact, is determinative in evaluating general jurisdiction. *See Meyers v. Hamilton Corp.*, 143 Ariz. 249, 253, 693 P.2d 904, 908 (1984). Absent continuous and systematic contacts with the forum, general jurisdiction does not exist. Otherwise unsupported by the record, Petitioners' unsubstantiated legal conclusions offer no compelling reasons to grant the Petition.

C. Petitioners Have Not Established Specific Personal Jurisdiction Because Petitioners' Claim Does Not Arise Out Of Or Relate To Respondent's Contact With Arizona.

When a defendant's activities are not so pervasive as to subject it to general jurisdiction, the court may still find specific jurisdiction. To do so, due process requires that three conditions be satisfied: (1) the defendant purposely avails itself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the contact with the forum; and (3) the exercise of jurisdiction is reasonable. *Williams II*, 199 Ariz. at 3, 13 P.3d at 282; *see also Burger King*, 471 U.S. at 472-76.

The arguments below focused on the second prong of this test, namely whether or not the claim arose out of or related to Respondent's contacts with Arizona. *Helicopteros*, 466 U.S. at 415. In considering whether the claim arose out of the casino's contacts with Arizona, the *Williams II* court cited the "but for" test adopted by the Ninth Circuit. 199 Ariz. at 5, 13 P.3d at 284 (*citing Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *reversed on other grounds*, 499 U.S. 585

(1991)). Applying the "but for" test, "a nexus exists if a plaintiff's injury would not have occurred but for a defendant's forum activities." *Williams II*, 199 Ariz. at 4, 13 P.3d 283. The *Williams II* court held that, because plaintiffs established no nexus between their claim and the casino's activities in Arizona, specific jurisdiction did not exist. 199 Ariz. at 5, 13 P.3d at 284.

Here, the facts are virtually identical to those in *Williams*. Although Brackney was familiar with the casino, there is no evidence in the record showing Respondent's forum contacts caused any of Brackney's actions on the night of the accident. *See* Memorandum Decision at 12, ¶ 18. Petitioners have not and cannot show that Brackney would not have gone to the casino "but for" Respondent's activity in Arizona. *See id.* at 12, ¶ 18. The record supports Respondent's position that the accident was the sole result of Brackney's unilateral activities and in no way related to Respondent's alleged contacts with Arizona. Brackney's unilateral decisions to visit the casino, drink to excess and then drive off drunk do not create jurisdiction.

Such unilateral acts of someone other than the defendant cannot support jurisdiction. *Williams II*, 199 Ariz. at 5, 13 P.3d at 284. "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contract with the forum state." *Burger King*, 471 U.S. at 475 (*citing Helicopteros*, 466 U.S. at 417). The unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum state to justify an assertion of jurisdiction. *Burger King*, 471 U.S. at 475.

Moreover, inducement of the visit, in the context of specific jurisdiction, is meaningless because that is not the act out of which the claim arose. If this fact was enough, then all of Respondent's Arizona customers who saw advertising could assert jurisdiction for any act which occurred in Nevada. In effect, the advertising would support general jurisdiction because there would be no nexus between the defendant's contacts and the claim. The alleged marketing and advertisement contacts are not enough to exercise jurisdiction over the casino. *See Williams I*, 195 Ariz. at 471-72, 990 P.2d at 672-73.

Like the shortcomings with regard to general jurisdiction, Petitioners fail to identify a single Arizona contact causally related to the claim, an essential element for asserting specific personal jurisdiction. Petitioners are unable to establish a "causal nexus" between any of Respondent's alleged forum contacts and the claim in order to satisfy the "but for" test adopted and applied by the Arizona Supreme Court in *Williams II*. The failure to show a "causal connection" between Respondent's forum contacts and Brackney's actions that caused Petitioners' claim preclude the exercise of specific jurisdiction. *See* Memorandum Decision at 12, ¶ 18 (*citing Williams II*, 199 Ariz. at 4-5, 13 P.3d at 283-84).

III. The *Calder* "Effects Test" Does Not Support The Exercise Of Personal Jurisdiction Over Respondent.

Instead, Petitioners argue that application of the *Calder* "effects test" is enough to exercise specific jurisdiction. Notably, Petitioners offer no justification whatsoever for abandoning the *Williams II* "but for" test in favor of the inapposite *Calder* standard.

A. Petitioners Waived The *Calder* Argument By Raising It For First Time On Appeal.

The first obstacle to the *Calder* argument is that Petitioners waived it. "[I]ssues cannot be raised on appeal which were not presented in the trial court. *Yakus*, 321 U.S. at 471 (1944). As a general rule, "[o]n appeal . . . an appellant may not advance new theories or raise new issues to secure reversal." *Hourani v. Benson Hosp.*, 211 Ariz. 427 n.2, 122 P.3d 6 (App. 2005) (*citing Mitchell v. Gamble*, 207 Ariz. 364, ¶ 16, 86 P.3d 944, 949-50 (App. 2004)); *see also Paloma Inv. Ltd. P'ship v. Jenkins*, 194 Ariz. 133, 137, ¶ 17, 978 P.2d 110, 114 (App. 1998) ("New arguments may not be raised for the first time on appeal.").

This contention was never raised in the superior court, the court of appeals or the state supreme court. In fact, Petitioners *never* previously asserted the argument. Prior to the filing of the instant Petition, the argument only appeared in an *Amici Curiae* brief to the Arizona Supreme Court. Given that the state supreme court denied review, the *Calder* argument has never been, properly or improperly, considered by any court below.

Furthermore, association of new counsel in the instant appeal does not excuse the waiver. Although newly associated counsel may have raised the issue in the *Cook* and *Womack* cases, such is not imputed to overcome trial counsel's prior and repeated failures to raise the issue here. Accordingly, Petitioner's *Calder* argument was waived, is not properly before this Court, and should not be considered. This waiver, coupled with the scant discussion of general personal jurisdiction, leaves this Court with no compelling reasons to grant the Petition.

B. Notwithstanding, Mere Untargeted Negligence Is Not Grounds For Jurisdiction Under *Calder*.

Petitioners argue that *Calder* supports finding jurisdiction in this case even though Respondent did not commit any act in Arizona relating to the claim. Jurisdiction may properly be exercised in certain situations in which a defendant does not commit an act within the forum state; however, *Calder* only supports finding specific personal jurisdiction if the defendant commits an intentional act that expressly targets the plaintiff within the forum state. Because Respondent neither expressly targeted Petitioners nor knew Petitioners would be impacted, *Calder* does not support the exercise of personal jurisdiction in this case.

In *Calder*, a reporter and editor for the *National Enquirer* wrote an allegedly libelous story about actress Shirley Jones which was penned in Florida. 465 U.S. at 785-86. This Court held that the journalists were subject to specific personal jurisdiction in California. *Id.* at 789-90. The Court reasoned that jurisdiction in California

was proper because the journalists knew that the "devastating impact" of the story would be felt in California as that was where Jones lived and worked and, more importantly, where the tabloid had its largest circulation. *Id.* Even though the reporter and editor did not commit acts within California, the Court held that the exercise of personal jurisdiction did not offend due process because the defendants committed an intentional, allegedly tortuous act expressly aimed at a California resident that they knew would have a potentially devastating impact upon that resident in the forum state. *Id.*

There are no similar circumstances in this case. Petitioners allege, without any support in the record whatsoever, that Respondent knew the intoxicated driver was an Arizona resident and would drive into Arizona. The allegation is one not of an intentional tortuous act via express targeting, but rather exaggerated foreseeability, which has been repeatedly rejected in the jurisdiction analysis. *Williams II*, 199 Ariz. at 6, 13 P.2d at 285 (reasoning that foreseeability does not confer jurisdiction). Overserving a patron who then drives into Arizona cannot confer personal jurisdiction under either *Williams II* or *Calder*.

As noted in *Calder*, the defendants were not charged with "mere untargeted negligence," for which personal jurisdiction could not be exercised, but rather an intentional tortuous act expressly targeting the individual plaintiff in the forum state. *Calder*, 465 U.S. at 789. There is no allegation, and certainly no evidence in the record, that Respondent somehow targeted Petitioners when its employees allegedly overserved

Brackney and allowed him to drive to Arizona. Indeed, Petitioners' Complaint alleges negligence, not an intentional tort. (R. 1). Respondent's acts were not targeted toward Petitioners nor deliberately aimed at Arizona. At best, the alleged acts were nothing more than "mere untargeted negligence."

Regardless, even when supported by the record (which it is not here), a defendant's alleged knowledge that it is dealing with an Arizona resident is not sufficient to support the exercise of personal jurisdiction. The Arizona Supreme Court long ago held that knowledge that an act outside the forum could result in an injury in Arizona to an Arizona resident is not sufficient to support the exercise of personal jurisdiction. *See N. Propane Gas Co. v. Kipps*, 127 Ariz. 522, 527, 622 P.2d 469, 474 (1980). The benchmark for the exercise of personal jurisdiction is contact with the forum, not with residents of the forum. Jurisdiction is proper only if the contacts proximately result from actions by the defendant that create a substantial connection with the forum state. *Burger King*, 471 U.S. at 476.

In applying *Calder*, the Ninth Circuit Court of Appeals also held that knowledge that a foreign act could potentially injure a forum resident is not sufficient for the exercise of personal jurisdiction. *See Bancroft & Masters, Inc. v. Augusta Nat'l, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000). To meet the *Calder* "effects test," the defendant must have: (1) committed an intentional act; (2) expressly aimed at the forum state; that (3) caused harm, the brunt of which the defendant knows is likely to be suffered in the forum state. *Id.*

When applying *Calder*, courts have recognized that a foreign act with foreseeable effects in the forum state does not give rise to specific personal jurisdiction. *Id.* at 1087. Instead, something more must be required, which the Ninth Circuit concluded to be what this Court described as "express aiming." *Id. (citing Calder*, 465 U.S. at 789). In order to exercise specific personal jurisdiction, the defendant must have engaged in an intentional wrongful act expressly targeted at the plaintiff, whom the defendant knows to be a resident of the forum state. *Bancroft*, 223 F.3d at 1087.

Despite the resulting tragedy, Petitioners have not submitted any proof whatsoever that Respondent intentionally targeted Petitioners when it allegedly overserved Brackney and allowed him to drive home. Respondent's alleged acts were nothing more than "mere untargeted negligence," unsupportive of the exercise of personal jurisdiction under either *Williams II* or *Calder*. To hold otherwise would directly contradict and render meaningless the Arizona Supreme Court's holding in *Williams II* and violate Respondent's due process rights.

CONCLUSION

Petitioners have not presented any compelling reasons for this Court to grant the Petition. Therefore, for the reasons discussed above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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